

Public Law 99-659

99th Congress

An Act

Nov. 14, 1986

[S. 991]

To amend certain provisions of the law regarding the fisheries of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—FISHERIES CONSERVATION AND MANAGEMENT

SEC. 101. UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES WITHIN THE EXCLUSIVE ECONOMIC ZONE.

(a) **DEFINITION OF EXCLUSIVE ECONOMIC ZONE.**—Section 3 of the Magnuson Fishery Conservation and Management Act (hereinafter in this title referred to as the “Act”) (16 U.S.C. 1802) is amended—

(1) by striking out paragraph (8);

(2) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(3) by inserting immediately after paragraph (5) the following new paragraph:

“(6) The term ‘exclusive economic zone’ means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.”.

(b) **AUTHORITY REGARDING EXCLUSIVE ECONOMIC ZONE.**—Title I of the Act (16 U.S.C. 1811–1813) is amended to read as follows:

“TITLE I—UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES

“SEC. 101. UNITED STATES SOVEREIGN RIGHTS TO FISH AND FISHERY MANAGEMENT AUTHORITY.

“(a) **IN THE EXCLUSIVE ECONOMIC ZONE.**—Except as provided in section 102, the United States claims, and will exercise in the manner provided for in this Act, sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the exclusive economic zone.

“(b) **BEYOND THE EXCLUSIVE ECONOMIC ZONE.**—The United States claims, and will exercise in the manner provided for in this Act, exclusive fishery management authority over the following:

“(1) All anadromous species throughout the migratory range of each such species beyond the exclusive economic zone; except that that management authority does not extend to any such species during the time they are found within any foreign nation’s territorial sea or exclusive economic zone (or the

97 Stat. 1557.

Claims.
16 USC 1811.

equivalent), to the extent that that sea or zone is recognized by the United States.

"(2) All Continental Shelf fishery resources beyond the exclusive economic zone.

"SEC. 102. EXCLUSION FOR HIGHLY MIGRATORY SPECIES.

16 USC 1812.

"The sovereign rights and exclusive fishery management authority asserted by the United States under section 101 over fish do not include, and may not be construed to extend to, highly migratory species of fish."

(c) CONFORMING AMENDMENTS.—The Act is amended—

(1) by amending section 2—

(A) by amending paragraph (1) of subsection (b) to read as follows:

"(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish except highly migratory species, within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources"; and

16 USC 1801.

97 Stat. 1557.

(B) by amending paragraph (5) of subsection (c) to read as follows:

"(5) to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources.";

(2) by striking out "fishery conservation zone" each place it appears therein and inserting "exclusive economic zone"; and

(3) by amending the entry for title I in the table of contents of the Act to read as follows:

"TITLE I—UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES

"Sec. 101. United States sovereign rights to fish and fishery management authority.

"Sec. 102. Exclusion for highly migratory species."

SEC. 102. FOREIGN FISHING PERMITS.

Section 204(b) of the Act (16 U.S.C. 1824(b)) is amended—

(1) by adding at the end of paragraph (1) the following new sentence: "No permit issued under this section may be valid for longer than a year; and section 558(c) of title 5, United States Code, does not apply to the renewal of any such permit.";

(2) by striking out "upon its request" in paragraph (4)(C);

(3) by amending paragraph (6) by inserting "or he may disapprove all or any portion of the application" immediately before the period at the end of subparagraph (A); and

(4) by amending paragraph (12) to read as follows:

"(12) SANCTIONS.—(A) If any foreign fishing vessel has been used in the commission of any act prohibited by section 307, or if the owner or operator of the vessel has committed such an act, the Secretary may, or if any civil penalty imposed under section 308 or any criminal fine imposed under section 309 has not been paid and is overdue, the Secretary shall—

Vessels.
Law
enforcement and
crime.

"(i) revoke such permit, if any, issued for the vessel under this subsection, with or without prejudice to the right of the

foreign nation involved to obtain a permit for such vessel in any subsequent year;

“(ii) suspend such permit for the period of time deemed appropriate;

“(iii) deny a permit under this subsection to the vessel; or

“(iv) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under that application.

Any permit which is suspended under this subparagraph for nonpayment of a civil penalty shall be reinstated by the Secretary upon the payment of such civil penalty together with interest thereon at the prevailing rate.

“(B) The Secretary may temporarily deny or suspend the permit of any foreign fishing vessel pending the outcome of any administrative proceeding respecting a violation of section 307 of this Act if the Secretary determines that—

“(i) based upon information available to the Secretary, there are reasonable grounds to believe that the vessel has been used in the commission of such violation;

“(ii) immediate suspension of fishing privileges would serve the purposes of this Act; and

“(iii) either—

“(I) the violation presents a serious threat to the public interest,

“(II) the violation presents a serious threat to the achievement of any purpose or policy of this Act, or

“(III) the owner or operator of the vessel has been involved in a prior violation of this Act.

In applying this subparagraph—

“(I) the Secretary must notify the vessel owner of the proposed denial or suspension and give the owner a reasonable opportunity, not longer than 10 days from service of notice, to respond in writing or otherwise;

“(II) if a permit is denied or suspended under this subparagraph, any administrative proceeding respecting the violation at issue must be held as promptly as possible; and

“(III) if another permit application is pending for such vessel on or after the date of the violation, the Secretary need not act on that application before deciding whether or not to deny or suspend temporarily a permit under this subparagraph.”.

SEC. 103. HEALTH AND SAFETY STANDARDS FOR FOREIGN FISHING VESSELS.

(a) STANDARDS FOR UNITED STATES OBSERVERS.—Subsection (i) of section 201 of the Act (19 U.S.C. 1821(i)) is amended—

(1) by inserting “(A)” after “(1)” in paragraph (1);

(2) by inserting at the end of paragraph (1) the following new subparagraph:

“(B) The Secretary shall by regulation prescribe minimum health and safety standards that shall be maintained aboard each foreign fishing vessel with regard to the facilities provided for the quartering of, and the carrying out of observer functions by, United States observers.”; and

(3) by amending subparagraph (B) of paragraph (2) to read as follows:

"(B) the time during which a foreign fishing vessel will engage in fishing within the exclusive economic zone will be of such short duration that the placing of a United States observer aboard the vessel would be impractical; or".

(b) COMPLIANCE WITH VESSEL SAFETY STANDARDS OF THE FLAG COUNTRY.—Paragraph (3) of section 204(b) of the Act (16 U.S.C. 1824(b)(3)) is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by inserting "and" after the semicolon at the end of subparagraph (F); and

(3) by adding after subparagraph (F) the following new subparagraph:

"(G) all applicable vessel safety standards imposed by the foreign country, and shall include written certification that the vessel is in compliance with those standards;"

SEC. 104. REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) VOTING MEMBERS.—(1) Subsection (b) of section 302 of the Act (16 U.S.C. 1852(b)) is amended as follows:

(A) Paragraph (2)(A) is amended to read as follows:

"(2)(A) The members of each Council required to be appointed by the Secretary must be individuals who are knowledgeable and experienced with regard to the conservation and management, or the recreational or commercial harvest, of the fishery resources of the geographical area concerned. The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair apportionment, on a rotating or other basis, of the active participants (or their representatives) involved in the fisheries under Council jurisdiction."

(B) Paragraph (2)(B) is amended—

(i) by adding after the first sentence thereof the following new sentence: "A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the state regarding those individuals.";

(ii) by striking out "knowledge or experience" in the third sentence thereof and inserting "knowledge and experience"; and

(iii) by adding at the end thereof the following new sentence: "An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k)."

(C) Paragraph (3) is amended to read as follows:

"(3) Each voting member appointed to a Council by the Secretary in accordance with subsection (b)(2) shall serve for a term of 3 years; except that the Secretary may designate a shorter term if necessary to provide for balanced expiration to terms of office."

(2) The amendments made by paragraph (1) shall apply with respect to voting members of regional fishery management councils who are appointed, and to individuals who are nominated for appointment as voting members, on or after the date of the enactment of this Act.

(b) COUNCIL COMMENT ON FEDERAL AND STATE ACTION AFFECTING HABITAT.—Section 302 of the Act is further amended—

(1) by redesignating subsection (i) as subsection (j); and

16 USC 1852
note.

State and local
governments.
Classified
information.
16 USC 1852.

(2) by adding after subsection (h) the following new subsection:

"(i) **FISHERY HABITAT CONCERNS.**—Each Council may comment on, or make recommendations concerning, any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction. Within 45 days after receiving such a comment or recommendation from a Council, a Federal agency must provide a detailed response, in writing, to the Council regarding the matter."

(c) **CLOSURE OF MEETINGS.**—Paragraph (4) of section 302(j) of the Act (as redesignated by subsection (b)) is amended by striking out "; except that" and all that follows thereafter and inserting "; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section 303(d), must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics."

(d) **COMMITTEES AND PANELS.**—Subsection (j) (as redesignated by subsection (b)) of section 302 of the Act is further amended by adding at the end thereof the following new paragraph:

"(5) Each Council shall specify those procedures that are necessary or appropriate to ensure that the committees and advisory panels established under subsection (g) are involved, on a continuing basis, in the development and amendment of fishery management plans."

(e) **DISCLOSURE OF FINANCIAL INTEREST.**—(1) Section 302 of the Act is further amended by adding at the end thereof the following new subsection:

"(k) **DISCLOSURE OF FINANCIAL INTEREST.**—(1) For purposes of this subsection, the term "affected individual" means an individual who—

"(A) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2);

"(B) is a voting member of a Council appointed under subsection (b)(2); or

"(C) is the executive director of a Council.

"(2) Each affected individual must disclose any financial interest held by—

"(A) that individual;

"(B) the spouse, minor child, or partner of that individual; and

"(C) any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee;

in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction.

"(3) The disclosure required under paragraph (2) shall be made—

"(A) in the case of an affected individual referred to in paragraph (1)(A), before appointment by the Secretary; and

"(B) in the case of an affected individual referred to in paragraph (1) (B) or (C), within 45 days of taking office.

"(4) An affected individual referred to in paragraph (1) (B) or (C) must update his or her disclosure form at any time any such financial interest is acquired, or substantially changed, by any person referred to in paragraph (2) (A), (B), or (C).

"(5) The financial interest disclosures required by this subsection shall— Regulations.

"(A) be made on such forms, in accordance with such procedures, and at such times, as the Secretary shall by regulation prescribe; and

"(B) be kept on file, and made available for public inspection at reasonable hours, at the Council offices. Records.
Public
information.

"(6) The participation by an affected individual referred to in paragraph (1) (B) or (C) in an action by a Council during any time in which that individual is not in compliance with the regulations prescribed under paragraph (5) may not be treated as cause for the invalidation of that action.

"(7) Section 208 of title 18, United States Code, does not apply to an affected individual referred to in paragraph (1) (B) or (C) during any time in which that individual is in compliance with the regulations prescribed under paragraph (5)."

(2) For purposes of applying subsection (k) of section 302 of the Act (as added by paragraph (1)) to voting members and executive directors of regional fishery management councils who are serving in those capacities on the date on which the regulations prescribed to carry out that subsection first take effect, each such member or director must file a disclosure form under that subsection within 45 days after that date. 16 USC 1852
note.

SEC. 105. FISHERY MANAGEMENT PLANS; DISCLOSURE OF CONFIDENTIAL STATISTICS.

(a) REQUIRED PROVISIONS.—(1) Section 303(a) of the Act (16 U.S.C. 1853(a)) is amended—

(A) by striking out "and" at the end of paragraph (4);

(B) by striking out the period at the end of paragraph (5) and inserting a comma; and

(C) by adding after paragraph (5) the following new paragraphs:

"(6) consider, and may provide for, temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety of the vessels; and

"(7) include readily available information regarding the significance of habitat to the fishery and assessment as to the effects which changes to that habitat may have upon the fishery." Vessels.

(2) The amendments made by paragraph (1) apply to each fishery management plan that— 16 USC 1853
note.

(A) is submitted to the Secretary of Commerce for review under section 304(a) of the Act, or that is prepared by the Secretary, after January 1, 1987; or

(B) is in effect on that date, but compliance with those amendments is not required except in conjunction with the amendment to the plan next occurring after that date. Post, p. 3712.

(b) DISCLOSURE OF CONFIDENTIAL STATISTICS.—The first sentence of section 303(d) of the Act (16 U.S.C. 1853(d)) is amended to read as follows: "Any statistic submitted to the Secretary by any person in compliance with any requirement under subsection (a)(5) shall be confidential and shall not be disclosed; except—

"(1) to Federal employees and Council employees who are responsible for management plan development and monitoring; or
 "(2) when required by court order."

SEC. 106. ACTION BY SECRETARY REGARDING FISHERY MANAGEMENT PLANS.

Section 304 of the Act (16 U.S.C. 1854) is amended as follows:

(1) Subsection (a) is amended—

(A) by striking out "(the date of receipt of which is hereafter in this section referred to as the 'receipt date') in paragraph (1);

(B) by redesignating subparagraphs (A), (B), and (C) of paragraph (1) as subparagraphs (B), (C), and (D), respectively;

(C) by inserting immediately before subparagraph (B), as so redesignated, of paragraph (1) the following new subparagraph:

"(A) immediately make a preliminary evaluation of the management plan or amendment for purposes of deciding if it is consistent with the national standards and sufficient in scope and substance to warrant review under this subsection and—

"(i) if that decision is affirmative, implement subparagraphs (B), (C), and (D) with respect to the plan or amendment, or

"(ii) if that decision is negative—

"(I) disapprove the plan or amendment, and

"(II) notify the Council, in writing, of the disapproval and of those matters specified in subsection (b)(2)(A), (B) and (C) as they relate to the plan or amendment;"

(D) by amending subparagraph (C) (as so redesignated) of paragraph (1) by striking out "75-day" and inserting "60-day";

(E) by amending subparagraph (D) (as so redesignated) of paragraph (1) by striking out "30th day" and inserting "15th day";

(F) by amending paragraph (2)—

(i) by striking out "(1)(A)" and inserting "(1)(B)"; and

(ii) by striking out the period at the end of subparagraph (C) and inserting "and to fishery access adjustments referred to in section 303(a)(6)."; and

(G) by adding at the end thereof the following new paragraph:

"(3)(A) The Secretary shall take action under this section on any fishery management plan or amendment to a plan which the Council characterizes as being a final plan or amendment.

"(B) For purposes of this section, the term 'receipt date' means the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, or an amendment to a plan, that it characterizes as a final plan or amendment."

(2) Subsection (b) is amended—

(A) by amending paragraph (1)(A) to read as follows:

"(A) the Secretary does not notify the Council in writing of—

"(i) his disapproval under subsection (a)(1)(A)(ii), or

"(ii) his disapproval, or partial disapproval, under paragraph (2), of the plan or amendment before the close of the 95th day after the receipt date; or";

(B) by striking out "75th day" in paragraph (1)(B) and inserting "60th day";

(C) by amending paragraph (2) by striking out "paragraph (1)(A)" and inserting "paragraph (1)(B)"; and

(D) by amending paragraph (3)—

(i) by striking out "If the Secretary" in subparagraph (A) and inserting "If the Secretary disapproves a proposed plan or amendment under subsection (a)(1)(A)(ii), or", and

(ii) by striking out "(a)(1)(A)" in each of subparagraphs (B)(i) and (C)(i) and inserting "(a)(1)(B)".

(3) Subsection (c) is amended—

(A) by striking out "75-day" in paragraph (2)(A)(ii) and inserting "60-day";

(B) by striking out "30th day" in paragraph (2)(A)(iii) and inserting "15th day"; and

(C) by striking out "75-day" wherever it appears in paragraph (2)(B) and inserting "60-day".

(4) Subsection (e) is amended—

(A) by inserting ", in cooperation with the Councils," immediately after "maintain";

(B) by striking out "management," and inserting "management and on the economics of the fisheries,"; and

(C) by adding at the end thereof the following: "The Secretary shall annually review and update the comprehensive program and make the results of the review and update available to the Councils."

SEC. 107. SUBMISSION OF CERTAIN FALSE STATEMENTS A PROHIBITED ACT.

(a) **KNOWING AND WILLFUL SUBMISSION.**—Paragraph (1) of section 307 of the Act (16 U.S.C. 1857(1)) is amended—

(1) by striking out "or" at the end of subparagraph (G);

(2) by inserting "or" after the semicolon at the end of subparagraph (H); and

(3) by adding at the end thereof the following new subparagraph:

"(I) to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act."

(b) **CONFORMING AMENDMENT.**—Section 309(a)(1) of the Act (16 U.S.C. 1859(a)(1)) is amended by striking out "or (H)" and inserting "(H), or (J)".

SEC. 108. CIVIL PENALTIES.

Section 308 of the Act (16 U.S.C. 1858) is amended—

(1) by amending the first sentence of subsection (b) to read as follows: "Any person against whom a civil penalty is assessed under subsection (a) may obtain review thereof in the United

Courts, U.S.
Mail.

States district court for the appropriate district by filing a complaint in such court within 30 days from the date of such order and by simultaneously serving a copy of such complaint by certified mail on the Secretary, the Attorney General and the appropriate United States Attorney.”;

(2) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(3) by inserting immediately after subsection (c) a new subsection (d) to read as follows:

Maritime affairs.
Claims.

“(d) IN REM JURISDICTION.—A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 307 shall be liable in rem for any civil penalty assessed for such violation under section 308 and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.”.

SEC. 109. ADMINISTRATIVE FORFEITURES.

(a) PROCEDURES.—Section 310 of the Act (16 U.S.C. 1860) is amended—

(1) by amending the second sentence of subsection (c) to read as follows: “The provisions of the customs laws relating to—

“(1) the seizure, forfeiture, and condemnation of property for violation of the customs law;

“(2) the disposition of such property or the proceeds from the sale thereof; and

“(3) the remission or mitigation of any such forfeiture; shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, unless such provisions are inconsistent with the purposes, policy, and provisions of this Act.”; and

(2) by adding at the end of subsection (d)(1) the following new sentence: “Nothing in this paragraph may be construed to require the Secretary, except in the Secretary’s discretion or pursuant to the order of a court under section 311(d), to release on bond any seized fish or other property or the proceeds from the sale thereof.”.

16 USC 1861.

(b) JURISDICTION OF COURTS.—Section 311 of the Act (16 U.S.C. 1861) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

“(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—Notwithstanding any other provision of law, after September 30, 1986, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, or forfeitures of property for violations of any provision of this Act—

“(1) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this Act with respect to that fish or other property; and

“(2) a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this Act.

Any person assessed a civil penalty for, or convicted of, any violation of any provision of this Act shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation concerned.”

SEC. 110. REPEAL.

Section 401 of the Act (16 U.S.C. 1881; relating to the Law of Sea Treaty), and the entry referring to that section in the table of contents of the Act, are repealed.

SEC. 111. AUTHORIZATION OF APPROPRIATIONS.

(a) **AUTHORIZATION.**—Section 406 of the Act (16 U.S.C. 1882) is amended by adding at the end thereof the following new paragraphs:

“(12) \$69,000,000 for fiscal year 1986.

“(13) \$70,800,000 for fiscal year 1987.

“(14) \$72,900,000 for fiscal year 1988.

“(15) \$75,000,000 for fiscal year 1989.”

(b) **LIMITATIONS REGARDING CERTAIN NOAA FISHERY RESEARCH VESSELS.**—During fiscal years 1986 and 1987, the Secretary of Commerce may not replace with chartered fishery survey vessels the fishery research vessels of the National Oceanic and Atmospheric Administration operated by the Atlantic Marine Center, unless a period of 90 days has expired after the Secretary has submitted to Congress a full and complete statement (including relevant supporting studies) concerning the proposed chartering and the reasons therefor.

SEC. 112. CLERICAL AMENDMENTS.

Section 3(4) of the Act (16 U.S.C. 1802(4)) is amended—

(1) by striking out “*Artica islandica*” in the listing of mollusks and inserting in lieu thereof “*Arctica islandica*”; and

(2) by striking out “*Hippiospongia canaliculata*” in the listing of sponges and inserting in lieu thereof “*Spongia cheiris*”.

SEC. 113. DIRECTIONS REGARDING FISHERY MANAGEMENT COUNCIL MEMBERSHIP.

Notwithstanding section 302 of the Act (16 U.S.C. 1852) and effective on and after the date of the enactment of this Act, the Secretary shall take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries within the respective jurisdictions of the Regional Fishery Management Councils are fairly represented as voting members of the Councils.

16 USC 1852
note.

TITLE II—FISH AND SEAFOOD PROMOTION

Fish and Seafood
Promotion Act of
1986.

SEC. 201. SHORT TITLE.

This title may be cited as the “Fish and Seafood Promotion Act of 1986”.

16 USC 4001
note.

SEC. 202. FINDINGS.

16 USC 4001.

The Congress finds that—

(1) the commercial fishing industry of the United States significantly contributes to the national economy, and could

make a greater contribution if fish resources within the United States Exclusive Economic Zone were more fully utilized;

(2) the commercial fisheries of the United States provide significant employment in coastal areas and in processing and distribution centers;

(3) fish contribute an important nutritional component to the American diet;

(4) increased consumption of seafood in the United States could significantly lower the risk of many cardiovascular diseases;

(5) Federally supported development programs for commercial fisheries are unable to meet present and future marketing needs;

(6) many fish species are underutilized by the United States fishing industry because of underdeveloped markets; and

(7) the United States fishing industry has the potential to expand greatly its contribution to interstate and foreign commerce, favorably affecting the balance of trade.

Business and
industry.
16 USC 4002.

SEC. 203. PURPOSE.

The purpose of this title is to—

(1) strengthen the competitive position of the United States commercial fishing industry in the domestic and international marketplace;

(2) encourage the development and utilization of all species of fish available for harvest by the United States fishing industry;

(3) encourage the utilization of domestically-produced fish through enhancement of markets, promotion, and public relations;

(4) help the United States fishing industry develop methods to improve quality and efficiency in the marketplace;

(5) educate and inform consumers on the use of fish;

(6) develop better coordination of fisheries marketing and promotion activities with commercial fisheries research and development programs; and

(7) educate and inform the public about the nutritional value of fish in the diet.

Research and
development.

16 USC 4003.

SEC. 204. DEFINITIONS.

As used in this title, the term—

(1) "consumer education" means actions undertaken to inform consumers on matters related to the consumption of fish and fish products;

(2) "council" means a seafood promotional council established under section 210 of this title;

(3) "fish" means finfish, mollusks, crustaceans, and all other forms of aquatic animal life used for human consumption; the term does not include marine mammals and seabirds;

(4) "Fund" means the Fisheries Promotional Fund established in section 209 of this title;

(5) "harvester" means any individual who is in the business of catching or growing fish for purposes of sale;

(6) "importer" means any person in the business of importing fish or fish products into the United States from another country for commercial purposes or who acts as an agent, broker, or consignee for any person or nation that produces, processes or

markets fish or fish products outside of the United States for sale or other commercial purpose in the United States;

(7) "marketer" means any person who is in the business of selling fish or fish products in the wholesale, retail, or restaurant trade, but whose primary business function is not the processing or packaging of fish or fish products in preparation for sale;

(8) "marketing and promotion" means an activity aimed at encouraging the consumption of fish or fish products or expanding or maintaining commercial markets for fish or fish products;

(9) "member" means any person serving on the National Council or on any council;

(10) "National Council" means the National Fish and Seafood Promotional Council established in section 205 of this title;

(11) "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any private entity organized or existing under the laws of the United States or any State, commonwealth, territory or possession of the United States;

(12) "processor" means any person who is in the business of preparing or packaging fish or fish products (including fish of the processor's own harvesting) for sale;

(13) "receiver" means any person who owns fish processing vessels and any person in the business of acquiring fish directly from harvesters;

(14) "research" means any type of research designed to advance the image, desirability, usage, marketability, production or quality of fish and fish products;

(15) "sector" means—

(A) the sector consisting of harvesters;

(B) the sector consisting of importers;

(C) the sector consisting of marketers;

(D) the sector consisting of processors;

(E) the sector consisting of receivers; or

(F) the consumer sector consisting of persons professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products;

(16) "Secretary" means the Secretary of Commerce, or the Secretary's designee; and

(17) "United States" means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and any other territory, possession, or commonwealth of the United States.

SEC. 205. ESTABLISHMENT OF THE NATIONAL COUNCIL.

16 USC 4004.

(a) **ESTABLISHMENT.**—There is established the National Fish and Seafood Promotional Council.

(b) **COMPOSITION OF THE NATIONAL COUNCIL.**—(1) The National Council shall be composed of the Secretary, who shall be a nonvoting member, and fifteen voting members appointed by the Secretary.

(2) Nominations for appointees shall be submitted in a manner prescribed by the Secretary.

(c) **REGIONAL REPRESENTATION.**—The National Council shall be comprised of regional representation from the Northeast, Southeast,

Pacific, and Alaska regions. The Northeast region shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Maryland and Virginia. The Southeast region shall consist of the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana and Texas, the Commonwealth of Puerto Rico, and the territory of the Virgin Islands. The Pacific region shall consist of the States of Idaho, Washington, Oregon, California, and Hawaii, the territories of Guam and American Samoa, and the Commonwealth of the Northern Mariana Islands. The Alaska region shall consist of the State of Alaska.

(d) **VOTING MEMBERS.**—(1) The voting members of the National Council shall be—

(A) three members who reside in or do substantial fishing industry business in the Northeast region;

(B) three members who reside in or do substantial fishing industry business in the Southeast region;

(C) three members who reside in or do substantial fishing industry business in the Pacific region;

(D) three members who reside in or do substantial fishing industry business in the Alaska region;

(E) two members-at-large with demonstrated expertise in fresh-water and inland commercial fisheries and who are not residents of the states of the Alaska, Pacific, Southeast, or Northeast regions; and

(F) one member-at-large who is either a person professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products or a person who is a member of an organized labor union and has expertise in the United States fisheries.

(2) Of the members appointed pursuant to each of paragraphs (1)(A) through (D) of this subsection, one shall be a harvester, one shall be a processor or a receiver, and one shall be a marketer.

(e) **TERM OF OFFICE.**—Members of the National Council shall be appointed for a term of 4 years. A vacancy in the National Council shall not affect its ability to function. The Secretary shall appoint a new member within sixty days to fill a vacancy in an unexpired term. Any member may remain on the National Council beyond that member's term until a successor is appointed.

(f) **CHAIRMAN.**—The National Council shall annually elect a Chairman by a majority of those voting, if a quorum is present. Ten members of the National Council shall constitute a quorum, but a lesser number may hold hearings.

(g) **FIRST MEETING.**—The National Council shall first meet within one hundred and eighty days after the date of enactment of this Act.

(h) **COMPENSATION OF MEMBERS.**—Members of the National Council shall serve without compensation, but shall be reimbursed in accordance with section 5703 of title 5, United States Code, for reasonable travel costs and expenses incurred in performing their duties as members of the National Council.

SEC. 206. FUNCTIONS AND DUTIES OF THE NATIONAL COUNCIL.

(a) **FUNCTIONS AND DUTIES.**—The National Council shall—

(1) prepare and submit to the Secretary, for the Secretary's review and approval, an annual marketing and promotion plan which contains descriptions of consumer education, research, and other marketing and promotion activities of the National

Council for the following year, including plans to coordinate the activities of councils established under section 210 of this title;

(2) prepare and submit to the Secretary, for the Secretary's review and approval, an annual budget of the anticipated expenses and disbursements of the National Council, including probable costs of consumer education, research, and other marketing and promotion plans or projects, and referenda under section 210 of this title;

(3) maintain accounting records of the receipt and disbursement of all funds entrusted to the National Council, subject to the Secretary's right to review or inspect such records;

(4) maintain such books and records as the Secretary determines appropriate; and

(5) prepare and submit to the Secretary from time to time such reports or proposals as the Secretary or the National Council determines appropriate for furthering the purposes and policies of this title.

(b) **ANNUAL PLAN.**—Each annual marketing and promotion plan shall be directed to—

(1) increasing the general demand for fish and fish products;

(2) encouraging, expanding, or improving the marketing and promotion and utilization of fish and fish products; and

(3) improving the dissemination of data collected by consumer education, research, and other marketing promotion activities.

(c) **PROHIBITION ON CERTAIN REFERENCES.**—Consumer education and other marketing and promotion activities of the National Council shall contain no reference to a private brand or trade name and shall avoid use of deceptive acts or practices in behalf of fish or fish products or with respect to the quality, value, or use of any competing product or group of products. In addition, the National Council may not promote the consumption or purchase of a single or group of similar fish species (such as members of the same genera); except that the Council may use illustrations of a single or group of similar fish species in the course of promoting the generic consumption of fish and fish products.

(d) **EXECUTIVE DIRECTOR.**—The National Council may employ and determine the salary of an executive director, but such salary shall not exceed Senior Executive Service Level 6. The executive director shall have demonstrated expertise in the marketing and promotion of food products and may, without regard to the provisions of title 5, United States Code, with the approval of the National Council, select and employ additional staff as necessary.

(e) **FUNDING OF REFERENDUM.**—The National Council may enter into agreements with applicants proposing to establish a council under section 210 of this title for the purposes of funding a referendum establishing the council. The National Council may enter into agreements with the councils established under section 210 of this title for the purpose of funding a referendum to establish quality standards, or a referendum to terminate any such council.

(f) **AGREEMENTS.**—The National Council may enter into agreements to develop and carry out activities authorized under this title.

(g) **TERMINATION OF NATIONAL COUNCIL.**—The National Council shall cease to exist on October 1, 1990.

SEC. 207. DUTIES OF THE SECRETARY WITH REGARD TO THE NATIONAL COUNCIL.

(a) **DUTIES OF THE SECRETARY.**—The Secretary shall—

Patents and
trademarks.
Labeling.
Fraud.

5 USC 5332.

16 USC 4006.

(1) within sixty days after its submission by the National Council, review the annual marketing and promotion plan and budget and, if the Secretary determines that such plan and budget are in accordance with the purposes and policies of this title, approve such plan and budget;

(2) administer the Fund and, in accordance with subsection (b) of this section, withdraw from the Fund such sums as are necessary to carry out the National Council's approved marketing and promotion plan and budget;

Regulations.

(3) promulgate regulations necessary to carry out the purposes and policies of this title;

(4) provide such administrative assistance as the National Council may require for purposes of its initial organization and operation; and

(5) make all appointments to the National Council within ninety days after the date of enactment of this Act.

(b) **WITHDRAWAL OF FUNDS.**—The Secretary shall make withdrawals of sums from the Fund under this section at the request of the National Council, unless the Secretary determines that the purposes for which such sums are requested are not reasonably likely to further the purposes and policies of this title.

16 USC 4007.

SEC. 208. VOLUNTARY PAYMENTS.

Any person may make voluntary payments to assist the National Council to carry out its annual marketing and promotion plan and annual budget. The Secretary shall deposit such payments into the Fund.

16 USC 4008.

SEC. 209. ESTABLISHMENT OF FISHERIES PROMOTIONAL FUND.

(a) **ESTABLISHMENT OF THE FUND.**—There is established in the Treasury of the United States a Fisheries Promotional Fund. The Fund shall be available, to the extent provided for in appropriation Acts, for the purpose of making payments to carry out the annual marketing and promotion plan and annual budget of the National Council under this title.

(b) **DEPOSITS.**—There shall be deposited in the Fund—

(1) the moneys transferred to the Fund under section 2(b)(2) of the Act of August 11, 1939 (commonly known as the Saltonstall-Kennedy Act; 15 U.S.C. 713c-3(b));

(2) payments made voluntarily pursuant to section 208 of this title; and

(3) receipts from investments made under subsection (c) of this section.

(c) **DEPOSITS AND INVESTMENTS.**—Sums in the Fund that are not currently needed for the purposes of the Fund shall be kept on deposit in appropriate interest-bearing accounts that shall be established by the Secretary of the Treasury, or invested in obligations of, or guaranteed by, the United States. Any revenue accruing from such deposits and investments shall be deposited in the Fund.

(d) **AUTHORIZATION.**—There are authorized to be appropriated from the Fund, for the purposes of carrying out the annual marketing and promotion plan and annual budget of the National Council under this title, such sums as are deposited in the Fund under subsection (b) of this section in each fiscal year beginning in fiscal year 1987 through fiscal year 1990.

(e) AMENDMENTS TO THE SALTONSTALL-KENNEDY ACT.—Subsection (b) of section 2 of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)), is amended—

(1) by inserting “(1)” before “The Secretary of Agriculture”;

(2) by striking out “separate fund” and all that follows thereafter and inserting in lieu thereof the following: “separate fund only for—

“(A) use by the Secretary—

“(i) to provide financial assistance for the purpose of carrying out fisheries research and development projects approved under subsection (c), and

“(ii) to implement the national fisheries research and development program provided for under subsection (d); and

“(B) the provision of moneys, subject to paragraph (2), to carry out the purposes of the Fisheries Promotion Fund established under section 208(a) of the Fish and Seafood Promotion Act of 1986.”; and

(3) by adding at the end thereof the following new paragraph:

“(2) There are transferred from the fund established under paragraph (1) to the Fisheries Promotion Fund referred to in paragraph (1)(B) \$750,000 in fiscal year 1987, \$3,000,000 in each of fiscal years 1988 and 1989, and \$2,000,000 in fiscal year 1990.”.

Research and development.

Ante, p. 3720.

SEC. 210. ESTABLISHMENT OF A COUNCIL.

(a) APPLICATION.—An application for a charter for a seafood marketing council for one or more species of fish and fish products of that species may be filed by persons who meet the requirements specified in accordance with subsection (b)(6) of this section.

(b) FORM OF APPLICATION.—An application for a charter for a council shall be made by filing with the Secretary the text of a proposed charter in such form as shall be prescribed by regulation by the Secretary. The text of a proposed charter must contain such information as the Secretary considers necessary or appropriate for carrying out the provisions of this title, including—

(1) the name of the council and a provision proclaiming its establishment;

(2) a declaration of the purposes and objectives of the council;

(3) a description of the species of fish and fish products for which the council will implement marketing and promotion plans under section 211 of this title;

(4) the identification of each sector and the number and terms of representatives of each sector that will be represented as voting members of the council;

(5) the identification of those sectors (including the sector consisting of harvesters, the sector consisting of receivers, and, if subject to assessment, the sector consisting of importers) subject to a referendum to establish a council under subsection (e) of this section;

(6) a specification for each sector described under paragraph (5) of this subsection of the minimum requirements, as measured by income, volume, or other relevant factors, that a person engaging in business in the sector must meet in order to participate in a referendum;

(7)(A) a description of the procedures for determining assessment rates under section 213 of this title;

16 USC 4009.

Regulations.

(B) the proposed rate or rates that will be imposed by the council on receivers and, if subject to assessment, importers during its first year of operation;

(C) the maximum amount an assessment rate for any period may be raised above the rate applicable for the immediately preceding period; and

(D) the maximum rate or rates that can be imposed by a council on receivers or importers during the operation of the council;

(8) a provision setting forth the definition of a quorum for making decisions on council business and the procedures for selecting a chairman of the council;

(9) a provision setting forth the voting procedures by which votes may be cast by proxy; and

(10) such other provisions relating to administration of the council as the Secretary considers necessary.

The text of a proposed charter shall be accompanied by a document identifying, to the extent practicable by address of place of business, the persons (hereinafter referred to as "sector participants") that are considered by the applicants to meet the requirements specified in paragraph (6) of this subsection. The text of a proposed charter shall include provisions setting forth procedures for providing refunds to those sector participants subject to assessment under section 213 of this title, and may also include provisions which establish a maximum limit on the amount that any one sector participant may be required to pay under an assessment for any period.

(c) **CONTENTS OF CHARTER.**—The Secretary may not approve a proposed charter filed under subsection (a) of this section unless such charter provides that—

(1) the council will have voting members representing the harvesting, receiving and, if subject to assessment, importing sectors; and

(2) the members of the council shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the council.

(d) **REVIEW OF CHARTER.**—(1) Within 180 days of the receipt of an application to establish a council, the Secretary shall—

(A) identify, to the extent practicable, those sector participants that meet the requirements for eligibility to participate in the referendum under subsection (e) of this section;

(B) determine, to the extent practicable, if the charter is accompanied by a petition comprised of the signatures or corporate certifications, as the case may be, of no less than three sector participants in each sector identified in accordance with subsection (b)(5) of this section who collectively accounted for, in the twelve-month period immediately preceding the month in which the application was filed, not less than 10 percent of the value of the fish or fish products described in accordance with subsection (b)(3) of this section that were handled by each such sector during that period; and

(C) determine if the proposed charter is consistent with the provisions of this title and any other applicable law.

(2) If any negative determination is made under paragraph (1) of this subsection regarding a proposed charter, the Secretary shall advise in writing the sector participants who made the application of the reasons for such determination. A corrected application may be submitted thereafter to the Secretary for approval.

(e) CONDUCT OF REFERENDUM.—(1) Upon making affirmative determinations under subsection (d)(1) of this section regarding a proposed charter, the Secretary, within 90 days after the date of the last of such determinations, shall conduct a referendum on the adoption of the proposed charter among all sector participants identified in accordance with subsection (d)(1)(A) of this section. The Secretary shall by order establish the council and approve the proposed charter, if the referendum votes which are cast in favor of the proposed charter constitute a majority of the sector participants voting in each sector and the majority collectively accounts for, in the twelve-month period immediately preceding the month in which the proposed charter was filed under subsection (a) of this section, at least sixty-six percent of the value of the fish and fish products described in accordance with subsection (b)(3) of this section that were handled by that sector during such period.

(2) Not less than thirty days prior to holding a referendum under this subsection, the Secretary shall—

(A) publish (by such means as will result in wide publicity in regions affected by the proposed charter) the text of the proposed charter and a list of those sector participants eligible to vote in the referendum; and

(B) provide for public comment, including the opportunity for a public meeting.

(3)(A) The Secretary shall pay all costs of a referendum which establishes a council under this subsection. Within two years after a council is established the council shall reimburse the Secretary for any expenses incurred for the conduct of the referendum from assessments collected by the council. Prior to the holding of a referendum under this subsection, the Secretary shall require the applicants to post a bond or other security acceptable to the Secretary, in an amount which the Secretary determines to be sufficient to pay any expenses incurred for the conduct of the referendum, and shall immediately recover such amount if a referendum fails to result in the establishment of a council.

(B) As used in this paragraph, the term "expenses incurred for the conduct of the referendum" does not include salaries of Government employees or other administrative overhead, but is limited to those additional direct costs incurred in connection with conduct of the referendum.

(f) NOMINATIONS.—(1) Within thirty days after a council is established under subsection (e) of this section, the Secretary shall solicit from the sectors represented on the council nominations for members of the council. If the harvesters and receivers represented on the council are engaged in business in two or more regions of the United States, the nominations made under this paragraph, and the appointments to the council made under paragraph (3) of this subsection, must, to the extent practicable, result in equitable representation for the constituent regions.

(2) No person is eligible for nomination or appointment as a member of a council unless such person is knowledgeable and experienced with regard to the activities of, and is or has been actively engaged in the business of, the sector which such person will represent on the council.

(3) The Secretary shall, within sixty days after the end of the thirty-day period referred to in paragraph (1) of this subsection, appoint the members of the council from among the nominees.

(4) A vacancy on a council shall be filled, within sixty days after the vacancy occurs, in the same manner in which the original

appointment was made. A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term.

(5) The Secretary shall remove any member of a council if the council concerned first recommends, by not less than two-thirds of its members, removal for cause. Such a recommendation of a council must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

(g) **NATURE OF A COUNCIL.**—A council is not an instrumentality of the United States Government.

16 USC 4010.

SEC. 211. FUNCTIONS AND POWERS OF COUNCILS.

(a) **ACTIVITIES OF A COUNCIL.**—(1) Each council shall—

(A) Adopt a seal which shall be judicially noticed;

(B) implement all terms of its charter;

(C) prepare and submit to the Secretary, for review and approval under section 212(a)(1) of this title, a marketing and promotion plan and amendments to such plan which contain descriptions of the projected consumer education, research, and other marketing and promotion activities of the council;

(D) implement and administer an approved marketing and promotion plan and amendments to such plan;

(E) determine the assessments to be made under section 213 of this title and administer the collection of such assessments to finance council expenses described in paragraph (2) of this subsection;

Reports.

(F) receive, investigate and report to the Secretary accounts of violations of rules or orders relating to assessments collected under section 213 of this title, or quality standard requirements established under subsection (c) of this section;

(G) prepare and submit to the Secretary, for review and approval under section 212(a)(1) of this title, a budget (on a fiscal year basis) of the anticipated expenses and disbursements of the council, including—

(i) all administrative and contractual expenses;

(ii) the probable costs of consumer education, research, and other marketing and promotion plans or projects;

(iii) the costs of the collection of assessments; and

(iv) the expense of repayment of the costs of each referendum conducted in regard to the council;

Records.
Reports.

(H) maintain books and records, prepare and submit to the Secretary such reports from time to time as may be necessary for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it, and cause a complete audit report to be submitted to the Secretary at the end of each fiscal year;

(I) reimburse the Secretary for the expenses incurred for the conduct of the referendum to establish the council or any subsequent referendum to terminate the council that fails; and

(J) prepare and submit to the Secretary from time to time such reports or proposals as the council determines appropriate to further the purposes of this title.

Reports.

(2) Funds collected by a council under section 213 of this title shall be used by the council for—

(A) research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products;

(B) other expenses, as described in subsection (a)(1)(G) of this section;

(C) such other expenses for the administration, maintenance, and functioning of the council as may be authorized by the Secretary;

(D) any reserve fund established under subsection (b)(5) of this section and any administrative expenses incurred by the Secretary specified as reimbursable under this title.

(3) Marketing and promotion plans and amendments to such plans prepared by a council under subsection (a)(1)(C) of this section shall be designed to increase the general demand for fish and fish products described in accordance with section 210(b)(3) of this title by encouraging, expanding, and improving the marketing, promotion and utilization of such fish and fish products, in domestic or foreign markets, or both, through consumer education, research, and other marketing and promotion activities.

(4) Consumer education and other marketing and promotion activities carried out by a council under a marketing and promotion plan and amendments to such plan may not contain references to any private brand or trade name and shall avoid the use of deceptive acts or practices in promoting fish or fish products or with respect to the quality, value, or use of any competing product or group of products.

Patents and
trademarks.
Labeling.
Fraud.

(b) **AUTHORITY OF A COUNCIL.**—A council may—

(1) sue and be sued;

(2) enter into contracts;

(3) employ and determine the salary of an executive director who may, with the approval of the council, employ and determine the salary of such additional staff as may be necessary;

(4) collaborate with other councils and with the National Council in establishing and implementing a national marketing and promotion plan for one or more species of fish or fish products; and

(5) establish a reserve fund from monies collected and received under section 213 of this title to permit an effective and sustained program of research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products in years when production and assessment income may be reduced, but the total reserve fund may not exceed the amount budgeted for the current fiscal year of operation.

(c) **QUALITY STANDARDS.**—(1) A council may develop and submit to the Secretary for approval, or upon the request of a council the Secretary shall develop, quality standards for a fish or fish product described in accordance with section 210(b)(3) of this title. Any quality standard developed under this paragraph shall be consistent with the purposes of this title.

(2) A quality standard developed under paragraph (1) of this subsection may be adopted by a council by a majority of the members of the council if first approved, in a referendum conducted by the council, by a majority of the sector participants of the sector concerned voting and the majority collectively accounted for, in the twelve-month period immediately preceding the month in which the referendum is held, not less than sixty-six percent of the value of the

fish or fish products described in accordance with section 210(b)(3) of this title that were handled by that sector during such period.

(3) With respect to a quality standard adopted under paragraph (2) of this subsection, the council shall develop and file with the Secretary an official identification in the form of a symbol, stamp, label, or seal that will be used to indicate that a fish or fish product meets the quality standard at the time the official identification is affixed to the fish or fish product, or is affixed to or printed on the packaging material of the fish or fish product.

Regulations.

(4) The Secretary shall establish by regulation procedures for the use of an official identification filed with the Secretary under paragraph (3) of this subsection. Misuse of an official identification established under this section shall constitute a violation of this title.

(5) Prior to issuing final regulations under paragraph (4) of this subsection, the Secretary shall—

(A) publish the proposed regulations by such means as will result in wide publicity in affected regions; and

(B) provide for public comment and the opportunity for a public hearing.

(6) A council may receive, investigate and report to the Secretary accounts of violations of regulations issued under paragraph (4) of this subsection.

(7) Any regulation issued under paragraph (4) of this subsection shall be repealed immediately by the Secretary upon the termination under section 216 of this title of the council that developed the official identification to which the regulations apply.

(8) The procedures applicable to the adoption and the taking effect of a quality standard developed under this subsection also apply to a subsequent amendment or the termination of such standard.

(d) AMENDMENT OF A CHARTER.—A council may submit to the Secretary amendments to the text of the council's charter. Any proposed amendments to a charter shall be approved or disapproved in the same manner as the original charter was approved under section 210 (d) and (e) of this title, with the exception of section 210(d)(1)(B).

16 USC 4011.

SEC. 212. FUNCTIONS AND POWERS OF THE SECRETARY.

(a) DUTIES OF THE SECRETARY.—In addition to the duties prescribed under section 210 of this title, the Secretary shall—

(1) review, for consistency with the provisions of this title and other applicable law, and approve or disapprove, marketing and promotion plans and budgets within sixty days after their submission by a council;

(2) immediately notify a council in writing of the disapproval of a marketing and promotion plan or budget, together with reasons for such disapproval;

(3) issue orders and amendments to such orders that are necessary to implement quality standards under section 211(c) of this title;

Regulations.

(4) promulgate regulations necessary to carry out the purposes of this title;

(5) enforce the provisions of this title, as provided under section 217 of this title; and

(6) make all appointments to councils in accordance with section 210(f) of this title.

(b) ASSISTANCE.—The Secretary may provide, on a reimbursable or other basis, such administrative or technical assistance as a council may request for purposes of the initial organization and subsequent operation of the council.

SEC. 213. ASSESSMENTS.

16 USC 4012.

(a) AUTHORITY.—A council shall impose and administer the collection of the assessments that are necessary to pay for all expenses incurred by the council in carrying out its functions under this title.

(b) METHOD OF IMPOSITION.—(1) Assessments shall be imposed on sector participants in the receiving sector or the importing sector, or both, as specified in an approved council charter.

(2) An assessment on sector participants in the receiving sector shall be—

Maritime affairs.

(A) except for an owner of a fish processing vessel, in the form of a percentage of the value of the fish described in accordance with section 210(b)(3) of this title when purchased by such participants from fish harvesters; and

(B) for an owner of a fish processing vessel, in the form of a percentage of the value of the fish described in accordance with section 210(b)(3) of this title and harvested by such a vessel that is no less than the value of such fish, if such fish had been purchased by a receiver other than an owner of such a vessel.

(3) An assessment on sector participants in the importing sector shall be in the form of a percentage of the value, as determined for the purposes of the customs laws, of the fish or fish products described in accordance with section 210(b)(3) of this title when entered, or withdrawn from warehouse for consumption, in the customs territory of the United States by such sector participants.

(c) PROHIBITION ON ASSESSMENT.—A council may not impose an assessment on any person that was not eligible to vote in the referendum establishing the council under section 210(e) of this title by reason of failure to meet the requirements specified under section 210(b)(6) of this title, unless such person, after the date on which such referendum is held, meets the requirements of section 210(b)(6) of this title.

(d) VOLUNTARY PAYMENTS.—Any person may make voluntary payments or in-kind contributions to a council for purposes of assisting the council in carrying out its functions.

(e) DEPOSIT OF FUNDS.—All funds collected or received by a council under this section shall be deposited by the council in an appropriate account in the name of the council specified in its charter. Funds eligible to be collected or received by a council shall be limited to those authorized under this section.

(f) INFORMATION.—(1) Sector participants shall make available to the Secretary such information and data as is necessary for the effectuation, administration or enforcement of this title or any order or regulation issued pursuant to this title. Except as provided in paragraphs (2) and (3) of this subsection, any information obtained in carrying out this subsection shall be kept confidential by all officers and employees of the Department of Commerce, independent accountants and other persons who have access to such information.

(2) If the Secretary or an employee of the United States Government is a party to a suit or administrative action involving an assessment, order, or regulation issued under this title, the Secretary may disclose information obtained under paragraph (1) of this

subsection to the extent allowed by the judicial or administrative officer presiding over such suit or action.

(3) This subsection shall not prohibit—

(A) the issuance of general or statistical statements based upon reports of a number of persons subject to the provisions of this title which do not identify the information furnished by any person; or

(B) the publication by direction of the Secretary of the name of any person violating a requirement relating to an assessment imposed under subsection (a) of this section or to quality standards implemented by the Secretary under section 211(c) of this title, and a statement of the particular provisions of the requirement violated by such person.

(4) Any individual who is required to keep information confidential under this subsection and who knowingly violates this subsection shall, upon conviction, be—

(A) subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or both; and

(B) removed from office if an officer or employee of a council or the Department of Commerce.

Law
enforcement and
crime.

16 USC 4013.

SEC. 214. PETITIONS.

(a) **FILING OF PETITION.**—Any person subject to assessment under section 213 of this title may file a written petition with the Secretary alleging that—

(1) the assessment,

(2) the plan approved under section 212(a)(1) of this title on which the assessment is based, or

(3) any obligation imposed under the plan,

is not in accordance with law and requesting the Secretary to modify or take other appropriate action regarding the assessment or plan.

(b) **FORM OF PETITION.**—Any such petition shall be in writing and filed within the period prescribed by the Secretary. A person who files a petition under this section shall be given an opportunity for a hearing regarding the petition in accordance with regulations issued by the Secretary. After such a hearing, or if no hearing is requested, after consideration of all documentation and other evidence, the Secretary shall make a ruling upon such petition.

16 USC 4014.

SEC. 215. REFUNDS.

Notwithstanding any other provision of this title, any person who pays an assessment under this title may demand and shall promptly receive from the council a refund of such assessment. A demand for refund must be made in accordance with the procedures, and within such time, as shall be prescribed by the council and approved by the Secretary. Procedures to provide such a refund shall be established before any such assessment may be collected. Such procedures shall allow any person to request a refund for not less than ninety days from such collection, and provide that any such refund shall be made within sixty days after demand for such refund is made.

16 USC 4015.

SEC. 216. TERMINATION OF A COUNCIL.

(a) **PETITION FOR TERMINATION.**—(1) A petition to terminate a council may be filed with the Secretary by no less than three sector participants in any one sector. Any petition filed under this subsec-

tion shall be accompanied by a written document explaining the reasons for such petition.

(2) If the Secretary determines that a petition filed under paragraph (1) of this subsection is accompanied by the signatures, or corporate certifications, as the case may be, of no less than three sector participants in a sector referred to in paragraph (1) of this subsection who collectively accounted for, in the twelve-month period immediately preceding the month in which such petition was filed, not less than 20 percent of the value of the fish or fish products described in accordance with section 210(b)(3) of this title that were handled by that sector during such period, the Secretary, within 90 days after such determination, shall conduct a referendum for termination of the council among all sector participants in that sector.

(3) Not less than 30 days prior to holding a referendum under this subsection, the Secretary shall publish a notice of such referendum, including the document explaining the reasons for the petition filed under paragraph (1) of this subsection and any other relevant information the Secretary considers appropriate.

(4) If the referendum votes which are cast in favor of terminating the council constitute a majority of the sector participants voting and the majority, in the period referred to in paragraph (2) of this subsection, collectively accounted for not less than sixty-six percent of the value of such fish and fish products that were handled during such period by a sector referred to in paragraph (1) of this subsection, the Secretary shall by order terminate the council effective as of a date by which the affairs of the council may be concluded on an orderly basis.

(5) The Secretary initially shall pay all costs of a referendum conducted under this subsection. Prior to conducting such a referendum, the Secretary shall require petitioners to post a bond or other security acceptable to the Secretary in an amount which the Secretary determines to be sufficient to pay any expenses incurred for the conduct of such referendum.

Securities.

(6)(A) If a referendum conducted under this subsection fails to result in the termination of the council, the Secretary shall immediately recover the amount of the bond posted by petitioners under paragraph (5) of this subsection.

(B) If a referendum conducted under this subsection results in the termination of the council, the Secretary shall recover the expenses incurred for the conduct of the referendum from the account established by the council under section 213(e) of this title. If the amount remaining in such account is insufficient for the Secretary to recover all expenses incurred for the conduct of the referendum, the Secretary shall recover the balance of such expenses from the petitioners that posted a bond under paragraph (5) of this subsection.

(b) **PAYMENT OF REMAINING FUNDS.**—If a council is terminated under subsection (a) of this section, the Secretary, after recovering all expenses incurred for the conduct of the referendum under subsection (a) of this section, shall take such action as is necessary and practicable to ensure that moneys remaining in the account established by the council under section 213(e) of this title are paid on a prorated basis to the sector participants from whom those moneys were collected under section 213 of this title.

Courts, U.S.
16 USC 4016.

SEC. 217. ENFORCEMENT.

(a) **AUTHORITY.**—(1) The district courts of the United States shall have jurisdiction specifically to enforce and to prevent and restrain any person from violating any assessment, order or regulation made or issued under this title.

(2)(A) If a council has reason to believe that a person subject to an assessment, order or regulation made or issued under this title is violating such assessment, order or regulation, it may refer the matter to the Secretary.

(B) Except as provided in subparagraphs (C) or (D) of this paragraph, any civil action authorized to be brought under this subsection, when referred by a council under subparagraph (A) of this paragraph, shall be referred to the Attorney General for appropriate action.

(C) If the Secretary believes that the administration and enforcement of the provisions of this title would be adequately served by taking administrative action under subsection (b) of this section or by providing written notice or warning to any person committing a violation of this title, the Secretary is not required to refer such violation to the Attorney General.

(D) Whenever a matter has been referred by a council under subparagraph (A) of this paragraph and the Secretary or the Attorney General fails within 60 days of such referral to take appropriate action, the council may, upon filing notice with the Secretary or Attorney General, as appropriate, and other interested parties, bring an action in its own name.

(b) **RECOVERY OF COSTS.**—(1)(A) When a council brings an action under subsection (a)(2) of this section, the council may recover costs of litigation and, where the action is brought to collect an unpaid assessment, interest from the date the amount became due and payable.

(B) Any person who violates any provision of an order (including a cease and desist order previously issued under this paragraph) or regulation issued by the Secretary under this title, or who fails or refuses to pay, collect, or remit any assessment required under this title, may be assessed a civil penalty by the Secretary of not less than \$500 nor more than \$5,000 for each such violation. Each violation shall be a separate offense. In addition to, or in lieu of, a civil penalty under this subparagraph, the Secretary may issue an order requiring such person to cease and desist from continuing such violation.

(C) No penalty shall be assessed, or cease and desist order issued, under this paragraph unless the affected person is given notice and opportunity for a hearing before the Secretary with respect to such violation.

(D) Any order of the Secretary under this paragraph assessing a penalty or imposing a cease and desist order shall be final and conclusive, unless the affected person files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2)(A) Any person against whom a violation is found under paragraph (1) of this subsection may obtain review of such action in the United States court of appeals for the circuit in which such person resides or has his place of business, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days after the date of such order

District of
Columbia.

and by simultaneously sending a copy of such notice by certified mail to the Secretary.

(B) The Secretary shall promptly file in the court a certified copy of the record upon which such violation was found.

(C) The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence or not in accordance with law.

(3)(A) If any person fails to pay a civil penalty under this subsection after it has become final, the Secretary shall refer the matter to the Attorney General.

(B) The Attorney General shall institute appropriate action to recover the amount assessed under this subsection in a district court of the United States.

(C) If, within sixty days after such referral, the Attorney General fails to institute such appropriate action, the council to whose programs the assessment, order or regulation relates may institute an action in its own name.

SEC. 218. INVESTIGATIONS.

16 USC 4017.

(a) **AUTHORITY TO MAKE INVESTIGATIONS.**—The Secretary may make such investigations as the Secretary determines necessary to—

(1) carry out the Secretary's responsibilities under this title; and

(2) determine whether any person has engaged in any act or practice which constitutes a violation of the provisions of this title.

(b) **OATHS AND AFFIRMATIONS.**—For the purpose of investigations under subsection (a) of this section, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. The attendance of such witnesses and the production of any such records may be required from any place in the United States.

(c) **COURT ORDERS.**—In case of contumacy or refusal to obey a subpoena issued under this section by any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or has his business, to require the attendance and testimony of witnesses and the production of books, papers, and documents. Such court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony relating to the matter under investigation.

SEC. 219. REPORT.

16 USC 4001
note.

The Secretary shall, not later than March 1, 1989, submit to the Congress a report on the effectiveness of the implementation of this title in achieving the purposes of this title.

TITLE III—INTERJURISDICTIONAL FISHERIES

Inter-
jurisdictional
Fisheries Act of
1986.

SEC. 301. SHORT TITLE.

16 USC 4101
note.

This title may be cited as the "Interjurisdictional Fisheries Act of 1986".

16 USC 4101.

SEC. 302. PURPOSES.

The purposes of this title are—

- (1) to promote and encourage State activities in support of the management of interjurisdictional fishery resources; and
- (2) to promote and encourage management of interjurisdictional fishery resources throughout their range.

16 USC 4102.

SEC. 303. DEFINITIONS.

For the purposes of this title:

(1) The term "Federal fishery management plan" means a plan developed under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(2) The term "fishery resource" means finfish, mollusks, crustaceans, and any other form of marine animal or plant life, other than marine mammals and birds.

(3) The term "interjurisdictional fishery resource" means—

(A) a fishery resource for which a fishery occurs in waters under the jurisdiction of one or more States and the exclusive economic zone established by Proclamation Numbered 5030, dated March 10, 1983;

(B) a fishery resource for which there exists an interstate fishery management plan; or

(C) a fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

For purposes of applying section 305(a)(3) during fiscal year 1987, a Federal fishery management plan or an interstate fishery management plan for the fishery resource need not be in existence, but a plan of either kind for that resource must be in the development process during that year.

(4) The term "interstate fishery management plan" means a plan for managing fisheries developed and adopted by an interstate commission.

(5) The term "interstate commission" means a commission or other administrative body established by an interstate compact.

(6) The term "interstate compact" means a compact that has been entered into by two or more States, established for the purposes of conserving and managing interjurisdictional fishery resources throughout their range, and consented to and approved by Congress.

(7) The term "project" means a program for research in support of the management of an interjurisdictional fishery resource or an interstate cooperative fishery management agreement.

(8) The term "Secretary" means the Secretary of Commerce.

(9) The term "State" means any of the several States of the United States, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Northern Mariana Islands.

(10) The term "State agency" means any department, agency, commission, or official of a State authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

97 Stat. 1557.

SEC. 304. APPORTIONMENT.

16 USC 4103.

(a) **TIME WHEN APPORTIONMENTS MADE.**—Funds appropriated under section 308(a) shall be apportioned by the Secretary among the States on October 1 of each fiscal year, or as soon thereafter as practicable.

(b) **APPORTIONMENT FORMULA.**—The amount of funds apportioned to each State shall be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and received within such State during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen received within all of the States during those calendar years.

(c) **LIMITATIONS.**—(1) No State may receive an apportionment under subsection (b) for either fiscal year 1987 or fiscal year 1988 which is less than one-half of one percent of the total amount of funds available for that fiscal year.

(2) For any fiscal year after fiscal year 1988, no State that, under the apportionment formula in subsection (b), has a ratio of one-third of one percent or higher may receive an apportionment for any fiscal year which is less than one percent of the total amount of funds available for that fiscal year.

(3) For any fiscal year after fiscal year 1988, no State may receive an apportionment under this section for any fiscal year if that State's ratio under the apportionment formula in subsection (b) is less than one-third of one percent, unless the State—

(A) is signatory to an interstate fishery compact;

(B) has entered into an agreement with the Secretary or the Secretary of the Interior under which the personnel, services, and equipment of the State and the Federal agency concerned will be made mutually available for the enforcement of Federal and State laws pertaining to the protection of fishery resources;

(C) borders one or more of the Great Lakes; or

(D) has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management or interstate fisheries research program.

(4) No State that, under the apportionment formula in subsection (b), has a ratio of less than one-third of one percent and meets any of the requirements set forth in paragraph (1) (A), (B), (C), or (D) may receive an apportionment for any fiscal year which is less than one-half of one percent of the total amount of funds available for apportionment for such fiscal year.

(5) No State may receive an apportionment for any fiscal year under this section which is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(d) **UNUSED APPORTIONMENTS.**—Any part of an apportionment for any fiscal year to any State—

(1) that is not obligated during that year;

(2) with respect to which the State notifies the Secretary that it does not wish to receive that part; or

(3) that is returned to the Secretary by the State, may not be considered to be apportioned to that State and shall be added to such funds as are appropriated pursuant to section 308(a) for the next fiscal year (and shall be treated as having been appro-

appropriated for such next year) for apportionment under subsection (a). Any notification or return of funds referred to in paragraph (2) or (3) by a State is irrevocable.

16 USC 4104.

SEC. 305. STATE PROJECTS.

(a) **IN GENERAL.**—(1) Any State may, through its State agency or an interstate commission, submit to the Secretary a proposal for a project which includes full plans, specifications, and cost estimates for such project. The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the State as a part of its contribution to the total cost of the works.

(2) No part of any funds appropriated under any authorization contained in section 308 may be obligated with respect to any project until the proposal for such project has been submitted under paragraph (1) and approved by the Secretary. The Secretary, before approving any proposal for a project, must evaluate the proposal as to—

- (A) the soundness of design;
- (B) the possibilities of securing productive results;
- (C) the minimization of duplication with other research projects in support of the management of interjurisdictional fishery resources and carried out under this title or under any other law or regulation;
- (D) the organization and management of the project;
- (E) the methods proposed for monitoring and evaluating the success or failure of the project;
- (F) the consistency of the project with the purposes of this title specified in section 302; and
- (G) such other criteria as the Secretary may prescribe.

(3) The Federal share of the cost of any project conducted under this title shall not exceed 75 percent of the total estimated cost of the project, unless—

- (A) the State has adopted an interstate fishery management plan for the resource to which the project applies; or
- (B) the State has adopted fishery regulations which the Secretary has determined are consistent with any Federal fishery management plan for the species to which the project applies; in which case the Federal share shall not exceed 90 percent of the total estimated cost of the project.

(4)(A) If the Secretary approves or disapproves a proposal for a project, the Secretary shall promptly give written notification, including, if disapproved, a detailed explanation of the reasons for the disapproval, to the State agency submitting the proposal or, if the proposal is submitted through an interstate commission, such commission and the State.

(B) For the purposes of this title, funds apportioned under this section to any State shall be treated as having been obligated with respect to a project during the fiscal year in which the written notification of approval required under subparagraph (A) for the project proposal is made.

(b) **RESTRICTION.**—The expenditure of funds under this title shall be applied only to projects for which a proposal has been approved under subsection (a), except that up to \$25,000 each fiscal year may be obligated for a State to carry out an agreement with the Sec-

retary or the Secretary of the Interior under which the personnel, services and equipment of the State and the Federal agency concerned will be made mutually available for the enforcement of Federal and State laws pertaining to the protection of fishery resources. If otherwise applied, such funds shall be replaced by the State before the State may receive any additional funds under this title.

(c) **PAYMENT.**—When the Secretary determines that a project carried out under a proposal approved by the Secretary has been completed, or where the Secretary otherwise deems it appropriate, the Secretary shall cause to be paid to the proper authority of the State, or to the official or depository designated by the interstate commission if the State agency specifies that payment is to be made to the interstate commission, the Federal share of the project. Any payment made to an interstate commission shall be charged against the apportionment of the State concerned.

SEC. 306. PROPERTY.

State and local
governments.
16 USC 4105.

(a) **APPLICATION OF FEDERAL AND STATE LAWS.**—All work, including the furnishing of labor and materials, needed to complete any project approved by the Secretary shall be performed in accordance with applicable Federal and State laws under the direct supervision of the State agency, and in accordance with regulations as the Secretary may prescribe.

(b) **TITLE.**—Title to all property, real and personal, acquired for the purposes of completing any project approved by the Secretary vests in the State.

(c) **DISPOSAL.**—If a State disposes of any real or personal property acquired under this title, the State shall pay into the Treasury of the United States the amount of any proceeds resulting from the property disposed to the extent of and in the same ratio that funds provided under this title were used in the acquisition of the property. In no case shall the amount paid into the Treasury of the United States under this section exceed the amount of funds provided by this chapter for the acquisition of the property involved.

SEC. 307. REPORTS.

16 USC 4106.

After consultation with the States receiving funds under this title and with any interstate commission involved in carrying out a project under this title, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 90 days after the end of the fiscal year 1988, and each second fiscal year occurring after that fiscal year, a report which contains—

(1) a description of each project and law enforcement effort receiving funds under this title during the last 2 fiscal years ending before such report is submitted;

(2) a specification of the total amount of funds from the Federal Government and the total amount of funds from each State spent on each project and a law enforcement effort receiving funds under this title during the last 2 fiscal years ending before such report is submitted;

(3) an assessment of each project and law enforcement effort receiving funds under this title during the last 2 fiscal years ending before such report is submitted to determine whether such project is furthering the purposes of this title; and

(4) a statement specifying all funds which have been apportioned pursuant to section 305(a) and are available for obligation by a State or the Secretary but which have not been obligated.

16 USC 4107.

SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

(a) **GENERAL APPROPRIATIONS.**—There are authorized to be appropriated to the Department of Commerce for apportionment to carry out the purposes of this title \$5,000,000 for each of fiscal years 1987, 1988, and 1989.

(b) **ADDITIONAL APPROPRIATIONS.**—In addition to the amounts authorized in subsection (a), there are authorized to be appropriated to the Department of Commerce \$2,500,000 for each of fiscal years 1988 and 1989, which shall be available in such amounts as the Secretary may determine appropriate for the purposes of this title; except that—

(1) in providing funds to States under this subsection, the Secretary shall give a preference to those States regarding which the Secretary determines there is a commercial fishery failure or serious disruption affecting future production due to a fishery resource disaster arising from natural or undetermined causes, and any sums made available under this subsection may be used either by the States or directly by the Secretary in cooperation with the States for any purpose that the Secretary determines is appropriate to restore the fishery affected by such a failure or to prevent a similar failure in the future; and

(2) the funds authorized to be appropriated under this subsection shall not be available to the Secretary for use as grants for chartering fishing vessels.

Amounts appropriated under this subsection shall remain available until expended.

(c) **DEVELOPMENT OF MANAGEMENT PLANS.**—In addition to the amounts authorized under subsections (a) and (b), there are authorized to be appropriated to the Department of Commerce \$350,000 for each of fiscal years 1988 and 1989 to support the efforts of the following interstate commissions to develop interstate fishery management plans for interjurisdictional fishery resources:

(1) The commission established by the Atlantic States Marine Fisheries Compact, as consented to and approved by Public Law 77-539 (56 Stat. 267), approved May 4, 1942.

(2) The commission established by the Pacific Marine Fisheries Compact, as consented to and approved by Public Law 80-232 (61 Stat. 419), approved July 24, 1947.

(3) The commission established by the Gulf States Marine Fisheries Compact, as consented to and approved by Public Law 81-66 (63 Stat. 70), approved May 19, 1949.

SEC. 309. REPEAL.

The Commercial Fisheries Research and Development Act of 1964 (16 U.S.C. 779 et seq.) is repealed.

SEC. 310. EFFECTIVE DATE.

This title takes effect October 1, 1987.

16 USC 4101
note.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. NOAA MARINE FISHERIES PROGRAM AUTHORIZATIONS.

The National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409) is amended—

(1) in section 2(a), by striking out “and” after “1984,” and by inserting “, \$27,382,000 for fiscal year 1986, \$28,121,314 for fiscal year 1987, \$28,915,392 for fiscal year 1988, and \$29,764,234 for fiscal year 1989” immediately after “1985”;

(2) in section 3(a), by striking out “and” after “1984,” and by inserting “, \$25,933,000 for fiscal year 1986, \$26,633,191 for fiscal year 1987, \$27,385,248 for fiscal year 1988, and \$28,189,171 for fiscal year 1989” immediately after “1985”; and

(3) in section 4(a), by striking out “and” after “1984,” and by inserting “, \$11,395,000 for fiscal year 1986, \$11,702,665 for fiscal year 1987, \$12,033,120 for fiscal year 1988, and \$12,386,365 for fiscal year 1989” immediately after “1985”.

SEC. 402. ANADROMOUS FISH CONSERVATION ACT AUTHORIZATIONS.

Section 4(a) of the Anadromous Fish Conservation Act (16 U.S.C. 757d(a)) is amended—

(1) by striking out “and 1985.” in paragraph (4) and inserting “1985, and 1986.”; and

(2) by adding after paragraph (4) the following:

“(5) \$7,702,500 for fiscal year 1987.

“(6) \$7,920,000 for fiscal year 1988.

“(7) \$8,152,500 for fiscal year 1989.”.

SEC. 403. CENTRAL, WESTERN, AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT AUTHORIZATIONS.

Section 8 of the Central, Western, and South Pacific Fisheries Development Act (16 U.S.C. 758e-5) is amended—

(1) by striking “and” after “1984.”; and

(2) by inserting immediately after “1985” the following: “, 1986, 1987, and 1988”.

SEC. 404. ATLANTIC TUNAS CONVENTION ACT OF 1975 AUTHORIZATIONS.

Section 10 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971h) is amended by striking out “year 1976, the period beginning July 1, 1976, and ending September 30, 1976, and fiscal years 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, and 1986” and inserting “years 1986, 1987, 1988, and 1989”.

SEC. 405. GREAT LAKES FISHERY COMMISSION.

(a) INCREASE IN NUMBER OF COMMISSIONERS.—Section 3 of the Great Lakes Fishery Act of 1956 (16 U.S.C. 932) is amended to read as follows:

“SEC. 3. (a)(1) The United States shall be represented on the Commission by 4 Commissioners who shall be appointed by the President and who may not receive compensation for service as Commissioners. Of the Commissioners—

“(A) 1 shall be an official of the United States Government; and

“(B) 3 shall be individuals who reside in different Great Lakes States and who are knowledgeable regarding the fisheries of the

Great Lakes, except that 1 of them must also be an official of Great Lakes State.

"(2) The President shall appoint an alternate Commissioner who shall perform the duties of a Commissioner—

"(A) until a vacancy referred to in subsection (b)(3) is filled; and

"(B) in the event of the absence of a Commissioner from any meeting of the United States Section or the Commission.

"(b)(1) Except as provided in paragraph (2), the term of office of Commissioners appointed under subsection (a)(1)(B) is 6 years.

"(2) Of the Commissioners first appointed under subsection (a)(1)(B) after the date of the enactment of this subsection, 1 shall be appointed for a term of 2 years, 1 shall be appointed for a term of 4 years, and 1 shall be appointed for a term of 6 years.

"(3) Whenever a vacancy occurs among Commissioners appointed under subsection (a)(1)(B), the President shall appoint an individual to fill that vacancy for the remainder of the applicable term."

16 USC 932 note.

(b) **TRANSITION.**—The term of office of each United States Commissioner on the Great Lakes Fishery Commission who is serving on the date of enactment of this Act is terminated (except the United States Government official appointed under section 3(a) of the Great Lakes Fishery Act of 1956 (16 U.S.C. 932(a), as in effect before the date of enactment). However, the individuals appointed to those terms shall continue to serve as Commissioners until the President makes appointments under section 3(b)(2) of the Act of 1956 (as added by subsection (a)), which appointments shall be made within 60 days after the date of enactment.

(c) **CONFORMING AMENDMENT.**—Section 201 of the Act entitled "An Act to amend the North Pacific Fisheries Act of 1954, and for other purposes", approved October 9, 1972 (22 U.S.C. 2672a) is amended by striking out "the Great Lakes Fishery Commission,".

15 USC 1511c.

SEC. 406. NOAA ESTUARINE PROGRAMS OFFICE.

(a) **ESTABLISHMENT.**—The Administrator of the National Oceanic and Atmospheric Administration (hereinafter in this section referred to as the "Administrator") shall establish within the Administration an Estuarine Programs Office.

(b) **FUNCTIONS.**—The Estuarine Programs Office shall—

(1) develop and implement a national estuarine strategy for the Administration that integrates the research, regulatory, and trusteeship responsibilities of the Administration;

(2) coordinate the estuarine activities of the various organizations within the Administration, including activities in estuarine research and assessment, fisheries research, coastal management, and habitat conservation;

(3) coordinate the estuarine activities of the Administration with the activities of other Federal and State agencies; and

(4) provide technical assistance to the Administrator, to other Federal agencies, and to State and local government agencies in—

(A) assessing the condition of estuaries;

(B) identifying estuaries of critical national or regional importance;

(C) identifying technical and management alternatives for the restoration and protection of estuarine resources; and

(D) monitoring the implementation and effectiveness of estuarine management plans.

(c) **AUTHORIZATION.**—There are authorized to be appropriated to the Administration not to exceed \$500,000 for fiscal year 1987, \$530,000 for fiscal year 1988, \$560,000 for fiscal year 1989, and \$600,000 for fiscal year 1990 to carry out the provisions of this section.

SEC. 407. NOAA OFFICERS.

15 USC 1503b.

(a) **UNDER SECRETARY.**—There shall be in the Department of Commerce an Under Secretary of Commerce for Oceans and Atmosphere who shall serve as the Administrator of the National Oceanic and Atmospheric Administration established by Reorganization Plan No. 4 of 1970 (5 U.S.C. App. 1) and perform such duties as the Secretary of Commerce shall prescribe. The Under Secretary shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314).

Post, p. 3740.

15 USC 1507c.

(b) **ASSISTANT SECRETARY.**—There shall be in the Department of Commerce, in addition to the Assistant Secretaries of Commerce provided by law before the date of enactment of this Act, one additional Assistant Secretary of Commerce who shall have the title Assistant Secretary of Commerce for Oceans and Atmosphere and shall serve as the Deputy Administrator of the National Oceanic and Atmospheric Administration established by Reorganization Plan No. 4 of 1970 (5 U.S.C. App. 1) and perform such duties and functions as the Under Secretary of Commerce for Oceans and Atmosphere shall prescribe. The Assistant Secretary for Oceans and Atmosphere shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

Post, p. 3740.

15 USC 1503b
note.

(c) **APPLICABILITY.**—The individual serving on the date of enactment of this Act—

(A) as the Administrator of the National Oceanic and Atmospheric Administration shall also serve as the Under Secretary of Commerce for Oceans and Atmosphere until such time as a successor is appointed under subsection (a) of this section; and

(B) as the Deputy Administrator of the National Oceanic and Atmospheric Administration shall also serve as the Assistant Secretary of Commerce for Oceans and Atmosphere until such time as a successor is appointed under subsection (b) of this section.

(d) **CHIEF SCIENTIST OF NOAA.**—Section 2(d) of Reorganization Plan No. 4 of 1970 (5 U.S.C. App. 1) is amended to read as follows:

15 USC 1511
note.

“(d) There shall be in the Administration a Chief Scientist of the National Oceanic and Atmospheric Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level V of the Executive Schedule Pay Rates (5 U.S.C. 5316). The Chief Scientist shall be the principal scientific adviser to the Administrator, and shall perform such other duties as the Administrator may direct. The Chief Scientist shall be an individual who is, by reason of scientific education and experience, knowledge-

President of U.S.

Post, p. 3740.

able in the principles of oceanic, atmospheric, or other scientific disciplines important to the work of the Administration.”

Ante, pp. 591,
708.

(e) CONFORMING AMENDMENTS.—(1) Section 5314 of title 5, United States Code, is amended by striking “Administrator, National Oceanic and Atmospheric Administration.” and inserting in lieu thereof “Under Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Administrator of the National Oceanic and Atmospheric Administration.”

Ante, pp. 856,
867, 868.

(2) Section 5315 of title 5, United States Code, is amended—

(A) by striking “Deputy Administrator, National Oceanic and Atmospheric Administration.” and inserting in lieu thereof “Assistant Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Deputy Administrator of the National Oceanic and Atmospheric Administration.”; and

(B) by striking “Associate Administrator, National Oceanic and Atmospheric Administration.”

Ante, p. 814.

(3) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following: “Chief Scientist, National Oceanic and Atmospheric Administration.”

SEC. 408. TRANSFER OF AUTHORITY FOR REIMBURSEMENT UNDER THE FISHERMEN'S PROTECTIVE ACT OF 1967.

Effective October 1, 1986, paragraph (1) of section 7(f) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(f)(1)) is amended to read as follows:

“(1) the term ‘Secretary’ means the Secretary of State.”

16 USC 742c.

SEC. 409. FISHERIES LOAN FUND.

The third sentence of section 4(c) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742(c)) is amended to read as follows: “Any funds received in the fisheries loan fund after September 30, 1986, shall be covered into the Treasury as miscellaneous receipts.”

SEC. 410. CONVEYANCE AGREEMENT PROVISIONS.

Uniformed
services.
Corporations.
Alaska.
43 USC 1601
note.

(a) IN GENERAL.—Under the Agreement dated December 9, 1977, between the Commandant of the Coast Guard and Koniag, Incorporated, a regional native corporation, pursuant to Public Law 92-203 (a copy of which is recorded beginning at Book 44, Page 179 of the Kodiak Recording District, Kodiak, Alaska) and any conveyance made under that Agreement, the rights or title conveyed to Koniag, Incorporated, shall be construed to include the following:

Communications
and tele-
communications.

(1) Under the Agreement, welding or other equipment or machinery may be operated or maintained on lands conveyed to Koniag, Incorporated, if the equipment or machinery does not cause harmful electromagnetic interference with the Coast Guard Holiday Beach receiver site or is operated or maintained under terms and conditions mutually agreeable to the Coast Guard and Koniag, Incorporated. Harmful electromagnetic interference is defined as radio frequency signals which disrupt or degrade communications reception performance.

(2) The conveyance of the “old shipyard” includes the wharf and all lands of any nature beneath the wharf.

(3) An access and utility easement is intended as part of the conveyance for Parcel 2, known as Cliff Point, which consists of—

Highways.
Bridges.

(A) a 100-foot wide access easement along the existing access road or a location that is mutually agreeable to the

Coast Guard and Koniag, Incorporated, and includes the right to construct and operate an access road, bridges, guard rails, and other associated improvements; and

(B) a 40-foot wide utility easement adjacent to the access easement in paragraph (3)(A) of this subsection or a location that is mutually agreeable to the Coast Guard and Koniag, Incorporated.

(4) The construction, maintenance, and operation of a dock facility or location of any structure or thing on the premises described in section (c) of Schedule 4 of the Agreement is not inconsistent with the easement for the barge landing easement and access to and from the barge landing area reserved by the United States Government (hereinafter referred to in this paragraph as the "Government"), if the dock facility is constructed or the structure or thing is located as approved by the Government. Approval by the Government is deemed to be granted if a proposal for the construction and location of the dock facility, structure, or thing is submitted to the Government and—

(A) the Government does not respond within 60 days of receipt of the proposal; or

(B) if a response with recommendations for modification is submitted by the Government within 60 days of receipt of the proposal, the proposal is modified in a manner necessary to reasonably satisfy the requirements of the Government—

(i) to use the dock facility for a barge landing area as contemplated by the easement; and

(ii) to permit access to and from the barge loading area to public highways for the transportation of materials as specified in Agreement.

(b) APPLICATION.—All rights or conveyances confirmed by this section are subject to the sanctions in the Agreement referred to in subsection (a).

(c) IMPLEMENTATION.—The Commandant of the Coast Guard or other appropriate Federal officer shall issue the appropriate corrective conveyance and perform any other appropriate ministerial or official act necessary to carry out the purposes of this section within 60 days after the date of the enactment of this title.

Uniformed
services.

SEC. 411. INCIDENTAL TAKING OF DEPLETED MARINE MAMMALS.

(a) AMENDMENT OF THE MARINE MAMMAL PROTECTION ACT.—Paragraph (5)(A) of section 101(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(5)(A)) is amended—

(1) by striking "that is not depleted";

(2) in clause (i)—

(A) by striking "its habitat, and" and inserting in lieu thereof "will not have an unmitigable adverse impact"; and

(B) by inserting "or, in the case of a cooperative agreement under both this Act and the Whaling Convention Act of 1949 (16 U.S.C. 916 et seq.), pursuant to section 112(c)" immediately after "or section 109(f)"; and

(3) in clause (ii)(I), by inserting ", and on the availability of such species or stock for subsistence uses" immediately after "significance".

(b) STATEMENT BY THE SECRETARY.—Paragraph 4 of section 7(b) of the Endangered Species Act of 1973 (16 U.S.C. 1536(b)(4)) is amended—

- (1) by striking "and" at the end of subparagraph (A);
- (2) by inserting "and" after the semicolon at the end of subparagraph (B); and
- (3) by inserting after subparagraph (B) the following subparagraph:

"(C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972;"

- (4) by striking "and" at the end of clause (ii);
- (5) by redesignating clause (iii) as clause (iv) and by striking "clause (ii)" in that clause and inserting in lieu thereof "clauses (ii) and (iii)"; and

(6) by inserting after clause (ii) the following new clause:
 "(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 101(a)(5) of the Marine Mammal Protection Act of 1972 with regard to such taking, and".

(c) EXEMPTIONS.—Subsection (o) of section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536(o)) is amended—

- (1) in the matter preceding paragraph (1)—

(A) by inserting ", sections 101 and 102 of the Marine Mammal Protection Act of 1972," immediately before "or any regulation"; and

(B) by striking "either" and inserting in lieu thereof "any"; and

- (2) in paragraph (2)—

(A) by striking "(b)(4)(iii)" and inserting in lieu thereof "(b)(4)(iv)"; and

(B) by inserting "prohibited" immediately before "taking of the species".

Approved November 14, 1986.

LEGISLATIVE HISTORY—S. 991:

SENATE REPORTS: No. 99-67 (Comm. on Commerce, Science, and Transportation).
 CONGRESSIONAL RECORD:

Vol. 131 (1985): Oct. 2, considered and passed Senate.

Vol. 132 (1986): Aug. 12, considered and passed House, amended.

Oct. 15, Senate concurred in House amendments with amendments.

Oct. 16, House concurred in Senate amendments with amendments.

Oct. 18, Senate concurred in House amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 22 (1986):
 Nov. 14, Presidential statement.

Ante, p. 3741.

16 USC 1371,
 1372.